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Civil Code and Related Subjects: Property

Joseph Dainow

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v. B. & T. Lumber Company,¹⁰ and this was resolved against the plaintiff who was seeking to recover an amount allegedly loaned to defendant, it appearing that the plaintiff had merely made payments to defendant on a contract to purchase lumber.

PROPERTY

*Joseph Dainow**

Construction on River Bank

Article 455 of the Civil Code provides that the use of the banks of navigable rivers is public, and the courts have enjoined owners from putting up constructions on such property.¹ At the same time, the codifiers recognized the probability of structures actually being placed on the river bank because they included two articles for the purpose of dealing with these situations. Article 861² provides for the removal of the construction if it "obstructs or embarrasses" the use of the river bank; Article 862³ permits the construction to remain if it "merely encroach upon the public way" and if its removal would cause signal damage to the owner. The choice between the prohibitive and the permissive rules is frequently and necessarily left to the court. In the case of *Town of Madisonville v. Dendinger*⁴ the court applied the permissive rule of Article 862 so as to leave a private warehouse which was located on the riparian property and extended across the river bank. In the present state of the jurisprudence, it is

10. 214 La. 1016, 39 So.(2d) 598 (1949).

* Professor of Law, Louisiana State University.

1. *Town of Napoleonville v. Boudreaux*, 142 So. 874 (La. App. 1932). For fuller discussion, see Note (1949) 9 LOUISIANA LAW REVIEW 542. Cf. *Pizanie v. Gauthreaux*, 173 La. 737, 138 So. 650 (1931).

2. Art. 861, La. Civil Code of 1870: "Works which have been formerly built on public places, or in the beds of rivers or navigable streams, or on their banks, and which obstruct or embarrass the use of these places, rivers, streams, or their banks, may be destroyed at the expense of those who claim them, at the instance of the corporation of the place, or of any individual of full age residing in the place where they are situated.

"And the owner of these works can not prevent their being destroyed under pretext of any prescription or possession, even immemorial, which he may have had of it, if it be proved that at the time these works were constructed, the soil on which they are built was public, and has not ceased to be so since."

3. Art. 862, La. Civil Code of 1870: "If the works, formerly constructed on the public soil, consist of houses or other buildings, which can not be destroyed, without causing signal damage to the owner of them, and if these houses or other buildings merely encroach upon the public way, without preventing its use, they shall be permitted to remain, but the owner shall be bound, when he rebuilds them, to relinquish that part of the soil or of the public way, upon which they formerly stood."

4. 214 La. 593, 38 So.(2d) 252 (1948). See fuller discussion in Note (1949) 9 LOUISIANA LAW REVIEW 542.

difficult to say which constructions "obstruct" and which "merely embarrass"; and when more decisions will have been rendered, there will be a broader basis on which to develop a pattern of permitted and prohibited constructions on the banks of rivers.

Timber Contracts

Since Act 188 of 1904,⁵ the sale of timber has created a separate estate distinct from the land, and the courts in turn have formulated the answers to the new questions which arose. Thus, unless otherwise specified, timber means *merchantable* timber, and the time for its removal must be *reasonable*; the court determines what is merchantable and has fixed the point of reference as the date of the contract.⁶ Questions of interpretation of new timber contracts frequently have to come to the court for settlement. Thus, in *Stanga v. Lake Superior Piling Company*⁷ the court had occasion to add a new point by indicating that a judgment should fix the time for removal to a certain period after the finality of the judgment because in the present case the calendar date fixed by the lower court had expired during the pendency of the suspensive appeal.

Another variation of the time problem in timber contracts was established in the two companion cases of *Greene v. Williams* and *Greene v. McQueen*.⁸ The contract specified 48 working months for the removal of the timber, and the court declared that the timber rights had already been fully exercised and were terminated because 9¼ years had elapsed with approximately 7 working months per year. The court dismissed the contention that another contract provision granting rights of way for 20 years kept the timber rights alive, because this right of way included passage for the removal of timber from neighboring lands as well as from the immediate tract in question.

Revocation of Dedication

The statutory dedication of a street to the public vests full ownership in the municipality or parish.⁹ If the street is aban-

5. Dart's Stats. (1939) § 6548.

6. *Brown v. Hodge-Hunt Lbr. Co.*, 162 La. 635, 110 So. 886 (1926); *Clark v. Weaver Bros. Realty Corp.*, 197 La. 63, 200 So. 821 (1941).

7. 214 La. 237, 36 So.(2d) 778 (1948).

8. 214 La. 552, 38 So.(2d) 229 (1948).

9. La. Act 134 of 1896 (repealed by La. Act 51 of 1930 [Dart's Stats. (1939) § 5347]); *Arkansas-Louisiana Gas Co. v. Parker Oil Co.*, 190 La. 957, 183 So. 229 (1938). Distinguish the establishment of a mere servitude by tacit dedication. La. Rev. Stats. of 1870, § 3368, as amended by La. Act 220 of 1914 [Dart's Stats. (1939) § 3634]; *Goree v. Midstates Oil Corp.*, 205 La. 988, 18 So.(2d) 591 (1944); *Bomar v. City of Baton Rouge*, 162 La. 342, 110 So. 497 (1926).

doned or not necessary for public purposes, Act 382 of 1938 provides that the dedication may be revoked, whereupon "all of the soil covered by and embraced in such roads, streets or alleyways up to the center line thereof, shall revert to the then present owner or owners of the land contiguous thereto." This constitutes a new conveyance, as distinguished from the termination of a servitude of right of way. In the case of *Martin v. Fuller*¹⁰ the dedication of an alleyway was revoked by the City of Monroe and the dispute arose over the ownership of the land. Prior to the revocation, the original owner gave an option to plaintiff to purchase the lots on both sides of the alleyway, describing the lots but making no mention of the alleyway. After the revocation, and its recordation, the original owner conveyed certain property to defendant by a deed which included specific description of the alleyway land. When plaintiff exercised his option and recorded his deed, he claimed ownership of the alleyway strip. Both sides of the argument are well outlined in the majority and dissenting opinions but the decision favored the plaintiff. The majority interpreted the statute "reverts to the then present owner" of the contiguous land as meaning *reverts to the property from which it was carved out by the dedication*.

A situation which somewhat resembles this one is the sale of a riparian property by a deed which describes the front line at the river road, but in that case the court held that the original owner remained owner of the land or the bank on the river side of the road so as to become owner of any accretion by alluvion.¹¹ There is a clear distinction however as to the original owner of the alleyway because the statutory dedication of that land completely divested him of any proprietary interest, and the 1938 statute permitting the revocation could only have intended the incorporation of this land, up to its center, with the adjacent properties.

The dissenting opinion adheres to the letter of the statute in insisting upon the revesting of the land in the original owner whose option covering the adjacent lots had not yet been taken up. However, the intent of the statute, in combination with the state's registry laws, supports the majority view.

Occupancy—after abandonment

One of the modes of acquiring ownership is by occupancy,¹²

10. 214 La. 204, 37 So.(2d) 851 (1948), noted in (1949) 23 Tulane L. Rev. 402.

11. *Maginnis v. Marcello*, 168 La. 997, 123 So. 653 (1929).

12. Art. 3412 et seq., La. Civil Code of 1870.

but this is limited to things which at the time have no owner, *res nullius*. A thing which is susceptible of ownership may happen to be without an owner either by reason of the fact that it has not yet had any owner (wild life and game), or because its former owner has abandoned it.¹³ In the latter situation, a claim of occupancy must be predicated on a preliminary proof of abandonment, which is not a matter to be taken lightly. Thus in *Donnell v. Gray*¹⁴ a landowner was denied the ownership of certain oil well equipment merely because it had been left on his property for a considerable time after operations were finished. The owner's silence and failure to remove the equipment after a notice to vacate do not constitute an abandonment. In fact, the original owner could not have had any intention of giving it up because he later sold the equipment to the plaintiff in the present suit who was trying to get it from the resisting defendant. Judgment was rendered in favor of plaintiff.

PRESCRIPTION

*Joseph Dainow**

Acquirendi causa

For the ten-year acquisitive prescription in good faith and with just title, the Civil Code provides that the entry on a part of the estate establishes possession of the whole property as described in the deed.¹ Where the property involved is one single tract of land, properly described, the application of this principle is clear and simple. In the case of *Haas v. Dezauche*² the facts presented a variation of the problem, because in the one deed there were included several separate tracts of land which were contiguous but individually described. Entry had been satisfactorily established³ on part but not all of this land; there was no showing of actual possession over the area in dispute. The court sustained the acquisitive prescription for the whole property on the ground that, despite the separate descriptions of the respec-

13. Art. 3421, La. Civil Code of 1870.

14. 41 So.(2d) 66 (La. 1949).

* Professor of Law, Louisiana State University.

1. Art. 3437, La. Civil Code of 1870: "It is not necessary, however, that a person wishing to take possession of an estate should pass over every part of it; it is sufficient if he enters on and occupies a part of the land, provided it be with the intention of possessing all that is included within the boundaries."

2. 214 La. 259, 37 So.(2d) 441 (1948).

3. This possession was shown by the cutting and removing timber from swamp lands, on the authority of *Veltin v. Haas*, 207 La. 650, 21 So.(2d) 862 (1945). See *The Work of the Louisiana Supreme Court for the 1944-1945 Term* (1946) 6 LOUISIANA LAW REVIEW 521, 580.